Office-Supreme Court, U.S.
FILED
SEP 22 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2099

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1981

THOMAS D. DAVIS, Petitioner,

v.

BRYANT MUELLAR, Sheriff of Rolette County, North Dakota, Respondent.

On Petition for Certiorari to the United States Court of Appeals for the Eighth Circuit

RESPONSE

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STATEMENT OF FACTS

At approximately 10:30 P.M. on October 9, 1978, Kim Albert of Rolla, North Dakota, received a phone call at his home from the Petitioner Davis during which Davis threatened to kill Albert the next morning at the First Bank of Rolla, Albert's place of employment.

After receiving the threatening call, Albert went immediately to the Respondent's residence in Rolla to report the incident.

Because of the unknown location from which Davis made the call and because of darkness, the Respondent decided to wait until morning to arrest Davis.

On the morning of October 10, 1978, the Respondent sent a deputy to Reservation police headquarters in Belcourt, seven miles from Rolla, in order to discuss the Albert complaint with Reservation police and to determine the whereabouts of the Petitioner. This discussion

resulted in a Reservation officer leaving the Belcourt Police Station to find Davis and ask him to come to the station for questioning.

Davis was found and voluntarily went to the Belcourt Police Station where he admitted making the call to Kim Albert. Upon admitting the call, he was arrested without a warrant for terrorizing, a felony.

After his arrest, Davis made a request for an extradition hearing. However, no tribal judges were available, therefore no hearing could be held.

The State complaint and warrant on the terrorizing charge were prepared on or about the time of Davis' arrest, but could not be issued because the Rolette County Magistrate was out of the county and unavailable.

In order to have the complaint signed and the warrant issued on October 10, 1978, a request was made to an Associate Judge of the Turtle Mountain Tribal Court to stop in Rolla

on his way home to Grafton, North Dakota, from Belcourt. This Associate Judge is a non-Indian who is a County Magistrate in an eastern North Dakota county and therefore empowered to take complaints and issue warrants. The judge was in Belcourt that morning, but began his trip home before the Bureau of Indian Affairs police contacted him regarding Davis' request for an extradition hearing. The judge stopped in Rolla between 12:00 P.M. and 1:00 P.M. on October 10, 1978, at which time the victim signed the complaint, the judge issued an arrest warrant, and set bond at $1,500.00. The judge then left for his home.

At that point all tribal judges were out of the county and unavailable.

Because Davis could not have an immediate extradition hearing, he chose to post the $1,500.00 bond rather than be held in the Belcourt Jail pending an extradition hearing. Bond was posted at the Sheriff's office in

Rolla by midafternoon, October 10, 1978, and Davis was released from the Belcourt Jail. At the time of his release and at all times during his four to five hours in custody, he was held in the Belcourt Jail under the supervision of the Bureau of Indian Affairs police. He has not been in custody since that time nor was he ever removed from the Turtle Mountain Indian Reservation by either State or Reservation officials. He has made voluntary appearances in both County and State Courts for hearings held in connection with the terrorizing charge.

ARGUMENT

The Petitioner Davis claims he was illegally arrested by a Rolette County Deputy Sheriff on October 10, 1978, at Belcourt, North Dakota, within the boundaries of the Turtle Mountain Indian Reservation and that he was not and has not been extradited from the jurisdiction of the Tribal Court. The Respondent Muellar denies that the arrest was illegal and,

to the contrary, states the arrest was in accordance with the statutes of the Turtle Mountain Tribal Code of 1976. It cannot be denied that Davis has not had an extradition hearing in the Turtle Mountain Tribal Court. However, such a hearing is unnecessary due to the fact Davis submitted himself to the jurisdiction of the State Court by appearing voluntarily at hearings held in both County and State Courts in connection with the terrorizing charge.

The Turtle Mountain Tribal Code of 1976 permits Indian persons to be arrested within the jurisdiction of the Turtle Mountain Tribal Court for offenses against State law. Such arrests can be made by State or Reservation officers, either with or without a State warrant. The Code also provides for extradition proceedings. [1]

1/ Turtle Mountain Tribal Code (1976) provides in part:

1.0710. Extradition Any Indian found within the boundaries of the Turtle Moun-

(Footnote continued on next page.)

Please believe me when I say that State, Federal, and Tribal law enforcement personnel in Rolette County have the utmost respect for

(Footnote 1 continued) tain Indian Reservation who is wanted by State authorities for a violation of State law committed outside the jurisdiction of the Turtle Mountain Tribal Court, and a warrant of arrest having been issued from a State Court, may be arrested and taken into custody by Bureau of Indian Affairs or Tribal law enforcement personnel for prompt transfer to the appropriate enforcement agency. The arrest and removal of the fugitive will be accomplished in accordance with the procedure set forth herein; Copies of State warrants may be presented to the Agency Branch of Law and Order whereupon they will be recorded as to date and time received. The warrant will be promptly presented to the Tribal or Trial Court Judge of the Turtle Mountain Tribal Court for a review as to date, charge, and person named thereon, to determine its apparent validity. The Judge, after satisfying himself or herself as to the apparent validity of the warrant, will issue an order for the arrest of the alleged fugitive from justice.

All Indians taken into custody as provided in the preceding paragraph shall be taken by the police officer to the Turtle Mountain Tribal Court where the Judge shall hold a hearing to determine only

(Footnote continued on next page.)

the laws of each jurisdiction in which they work and for the various courts within those jurisdictions. At no time in this or any

(Footnote 1 continued) whether the Indian person in custody and before the Court is the same person charged on the face of the warrant. An Indian may waive such hearing by executing a waiver of removal hearing and he will be promptly turned over to the custody of the appropriate State official. Where a State warrant is issued from a State other than the State wherein the Indian Court is located, the warrant should be presented to the Tribal Court by the Sheriff of the County in which the reservation is located. Upon assurance by the local sheriff that the out-of-state agency will extradite the wanted subject, the procedure governing the arrest of the wanted fugitive may be completed as in other cases. After a hearing, as provided in paragraph (2) above, if the Judge is satisfied the fugitive is the same person named in the State warrant, the Judge shall issue an appropriate order to that effect which will authorize the State official to remove the fugitive from the Turtle Mountain Indian Reservation. In all cases wherein Indians are arrested by reservation law and order personnel the requesting agency supplying the warrant shall be immediately notified that the subject is in custody and will be delivered to the proper official within a reasonable time to transfer the fugitive to their particular jurisdiction.
(Footnote continued on next page.)

other case has there been any attempt on the part of State law enforcement officials to usurp the power and statutes of the Turtle Mountain

(Footnote 1 continued)

1.0711 Fresh pursuit, defined. As used in section 1.0712 of this Code, the term "fresh pursuit" shall include fresh pursuit as defined by the common law, and also the pursuit of an Indian person, who is subject to the jurisdiction of the Turtle Mountain Tribal Court, who has committed a felony or misdemeanor or who is reasonably suspected of having committed a supposed felony, though no felony has been actually committed, if there is reasonable ground for believing that a felony has been committed. Fresh pursuit, as the term is used in this Chapter, shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

1.0712 State, county or municipal peace officer in fresh pursuit may arrest within Turtle Mountain Indian Reservation. Any member of a duly organized state, county or municipal peace unit who enters the Turtle Mountain Indian Reservation in fresh pursuit of an Indian person, who is subject to the jurisdiction of the Turtle Mountain Tribal Court, in order to arrest him on the ground that he is believed to have committed a felony or known to have committed a misdemeanor in an off-reservation jurisdiction, shall have the same authority to arrest and hold in custody said Indian person on the ground that he is believed to have com-

(Footnote continued on next page.)

Reservation or the sovereignty of the Tribe.

Since the time of his arrest on October 10, 1978, the Petitioner has used the sensitive issue of tribal sovereignty in his attempt to have the charge against him dismissed. It would

(Footnote 1 continued) mitted a felony or known to have committed a misdemeanor within this reservation.

1.0713 Removal procedure. If an arrest is made within the Turtle Mountain Indian jurisdiction by an officer of an off-reservation jurisdiction in accordance with the provisions of section 1.0712 of this Code, he, without unnecessary delay, shall take the Indian person arrested to the Turtle Mountain Agency Branch of Law and Order in Belcourt, North Dakota, where the arrested Indian person will be permitted to either sign a waiver of removal hearing of alleged fugitive form, or taken before a Tribal Court Judge of the Turtle Mountain Tribal Court, for the purpose of determining only the lawfulness of the arrest.

If, in the event a hearing is held, the Judge determines that the arrest was lawful, he or she shall commit the Indian person arrested to await for a reasonable time the issuance of an arrest warrant by the off-reservation jurisdiction in which the offense was allegedly committed. If the Judge determines that the arrest was unlawful he or she shall discharge the Indian person arrested.

have been very easy to dismiss the charge as no bodily injury or property damage was done. By the same token, the Petitioner's threat to kill Kim Albert is an action which should not and cannot be tolerated by the victim or society.

In his brief, the Petitioner makes allegations of lawless conduct and knowing violations of the law on the part of the Respondent. These allegations are emphatically denied. The allegations made by the Petitioner against the Respondent are allegations that can be applied to the Petitioner, but to make these allegations against the Respondent is unjust and contravenes the facts and law involved.

The Respondent has absolutely no objection to proceeding with an extradition hearing in the Turtle Mountain Tribal Court and has never had any objection to proceeding with such a hearing as this option has been presented before and refused by the Petitioner.

The Respondent has nothing to add to the decisions of the Eighth Circuit Court and the Northeastern District Court of North Dakota concerning habeas corpus and tribal sovereignty and will make no argument on these matters except for the items mentioned in this brief.

CONCLUSION

Based on the facts and the law, the Respondent respectfully requests that certiorari be denied.

Respectfully submitted,

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September 1981

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